National Defence / Défense nationale

FIAT JUSTITIA

ANNUAL REPORT
of the Judge Advocate General

A REPORT TO THE MINISTER OF NATIONAL DEFENCE ON THE ADMINISTRATION OF MILITARY JUSTICE FROM 1 APRIL 2010 TO 31 MARCH 2011

Canada

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Dear Minister,

It is my honour to present you the twelfth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Forces, made pursuant to section 9.3 of the *National Defence Act*. This report covers the period 1 April 2010 to 31 March 2011.

Yours truly,

Blaise Cathcart, Q.C.
Major-General

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INTRODUCTION

It is with great pleasure that I report on the administration of military justice in the Canadian Armed Forces (CAF) for the period 1 April 2010 to 31 March 2011. This is my first report since my appointment as the Judge Advocate General (JAG) on 13 April 2010.

The last year has been an extremely active and challenging period for the Office of the JAG. During the reporting period, the office has been called upon to deliver legal advice on a broad spectrum of issues, often under stressful circumstances and with short timelines. All members of the Office of the JAG have supported 9 operations; we have deployed 22 legal officers on 5 international operations and 10 legal officers on 4 domestic operations.

The Judge Advocate General, Brigadier-General B. B. Cathcart.

Following my appointment, I initiated a review of the activities of the Office of the JAG to ensure that everything we do is focussed on the mission and goals of the CAF and the Department of National Defence (DND). Following this review, on 28 January 2011, I issued the JAG Mission and Vision Statement. One driving force for the review was my concern that the consistently high demands and competing priorities that are placed upon all members of the Office of the JAG do not result in an unhealthy and demoralizing work/life balance. We must ensure that we care for our people and their families, and this strategic goal is a key objective in the Mission and Vision Statement.

The JAG Mission and Vision Statement is described in greater detail in Chapter II of this report. As you will note, military justice figures prominently. The JAG Mission and Vision Statement recognizes the role of the JAG as superintendent of Canada's military justice system. It also recognizes that we must continue to lead proactive military justice oversight, responsible development, and positive change.

Responsible development and positive change in our military justice system is once again evident during the reporting period. For example, Bill C-41, the *Strengthening Military Justice in the Defence of Canada Act*, was introduced in the House of Commons on 16 June 2010. Unfortunately, it did not proceed because Parliament was dissolved on 26 March 2011. This Bill would have continued the process of ongoing improvements to the military justice system. Bill C-41 is described in greater detail in Chapter IV of this report.

The success of the CAF depends a great deal on the effectiveness of the military justice system. The Office of the JAG, as Canada's experts on military justice and military law, remains constantly committed to supporting the CAF and the DND in achieving their goals and mission success.

With a renewed focus on the work of the Office of the JAG, this annual report is presented in a new format that I hope you will find helpful and informative.

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WHO WE ARE: THE OFFICE OF THE JAG

The Judge Advocate General (JAG)

BGen Cathcart assumes command of the Office of the JAG on 13 April 2010.

The JAG is appointed by the Governor in Council to act as legal advisor to the Governor General, the Minister of National Defence, the Department of National Defence (DND) and the Canadian Armed Forces (CAF) in matters relating to military law. "Military law" is the broad legal discipline encompassing all international and domestic law relating to the CAF, including its governance, administration and activities. In addition, the JAG also has a statutory mandate to superintend the administration of military justice in the CAF. In this capacity, the JAG conducts regular reviews of the military justice system and submits an annual report, such as this one, to the Minister on the administration of military justice in the CAF.

Office of the Judge Advocate General

The Office of the JAG supports the JAG in his duties. It is composed of regular and reserve force legal officers, civilian members of the public service, and some CAF members from other military occupations. All legal officers serving in the Office of the JAG are fully qualified lawyers, members in good standing of their respective provincial or territorial law societies, and are commissioned officers in the CAF, ranging in rank from Captain/Lieutenant (Navy) to Brigadier-General/Commodore.

The *National Defence Act* (NDA) provides that the JAG is responsible to the Minister in the performance of the JAG's duties and functions. Under regulations, every legal officer whose duty is the provision of legal services to the CAF shall be posted to a position established within the Office of the JAG. The JAG has command over all officers and non-commissioned members posted to a position established within the Office of the JAG. The duties of a legal officer posted to a position within the Office of the JAG are determined by or under the authority of the JAG and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer. Thus, the structure of the NDA and the *Queen's Regulations and Orders for the Canadian Forces* ensures that legal officers are able to provide independent legal advice.

Reserve Force legal advisors provide military justice advice to reserve units in Vancouver and throughout Canada, and augment the Office of the JAG in supporting operations.

Structurally, the Office of the JAG is composed of six sub-organizations: the Canadian Military Prosecution Service, Defence Counsel Services, and the following four divisions which are each headed by a Deputy Judge Advocate General (DJAG) in the rank of Colonel/Captain (Navy): Military Justice and Administrative Law, Operations, Regional Services, and Chief of Staff. In addition, the temporary Military Justice Strategic Response Team (MJSRT) was established during the previous reporting period to address various ongoing military justice policy and legislative challenges.

Canadian Military Prosecution Service (CMPS)

The CMPS is headed by the Director of Military Prosecutions (DMP). The DMP is the senior military prosecutor in the CAF, responsible for the conduct of all prosecutions at courts martial, and acts as counsel for the Minister on appeals to the Court Martial Appeal Court of Canada (CMAC) and the Supreme Court of Canada. The DMP also provides legal advice in support of investigations by the Canadian Forces National Investigation Service.

The DMP acts independently from the Office of the JAG and other CAF and DND authorities when exercising his powers, duties and functions but remains under the general supervision of the JAG, who may issue written general instructions or guidelines in respect of prosecutions. The JAG may also issue instructions or guidelines in respect of a particular prosecution, which must be made public unless the DMP considers that it would not be in the best interest of the administration of military justice to do so.

Defence Counsel Services (DCS)

Defence Counsel Services is headed by the Director of Defence Counsel Services (DDCS). The DDCS provides, and supervises and directs the provision of, legal services to persons who are liable to be charged, dealt with, and tried under the Code of Service Discipline (CSD).

Although the DDCS acts under the general supervision of the JAG, he is independent of the Office of the JAG and other CAF and DND authorities when carrying out mandated functions which pertain to the defence of clients. The JAG may issue written general instructions or guidelines in respect of defence counsel services. However, unlike with the DMP, the JAG has no authority to issue instructions or guidelines in respect of a particular defence case.

Military Justice and Administrative Law (MJ&AL) Division

The MJ&AL Division is responsible for legal issues dealing with military justice and administrative law, including compensation and benefits. The division provides legal advice on a wide range of matters such as grievances by CAF members, administrative investigations such as summary investigations and boards of inquiry, pensions and estates, military personnel policy. Legal officers in this division

undertake the development of legal policy and legislation related to military justice and to national defence. Owing to a continuously increasing workload, at the end of the reporting period this division was divided in two: an Administrative Law Division and a Military Justice Division. As a result, the Office of the JAG now has a Division solely dedicated to leading proactive change in the area of military justice in addition to one dealing with administrative law.

Operations Division

The Operations Division is responsible for providing legal support to the CAF and DND in relation to operational law. Operational law is that body of domestic and international law that applies to the conduct of all phases of a CAF operation at all levels of command. This includes advising on current, and preparing for future, operations conducted in Canada and abroad. Additionally, the Operations Division oversees all legal officers deployed on operations, and through these officers provides legal support to deployed CAF elements with regard to military law and military justice.

Regional Services Division

Regional Services legal offices are located at CAF Bases and Wings throughout Canada, as well as in the United States and Germany. Through these offices, Regional Services is responsible for providing general legal support and advice on all areas of military law, including advice on military justice, administrative law, and operational law matters, to the chain of command.

Many JAG field offices, including this AJAG office in Victoria, benefit from the experience of Liaison CWOs and CPOs assigned to the Office of the JAG.

Chief of Staff Division

The Chief of Staff (COS) Division is responsible for providing internal support and administrative services to the Office of the JAG. This includes military personnel management, financial services, information management, library services, and training, as well as overseeing all civilian staff in the Office of the JAG.

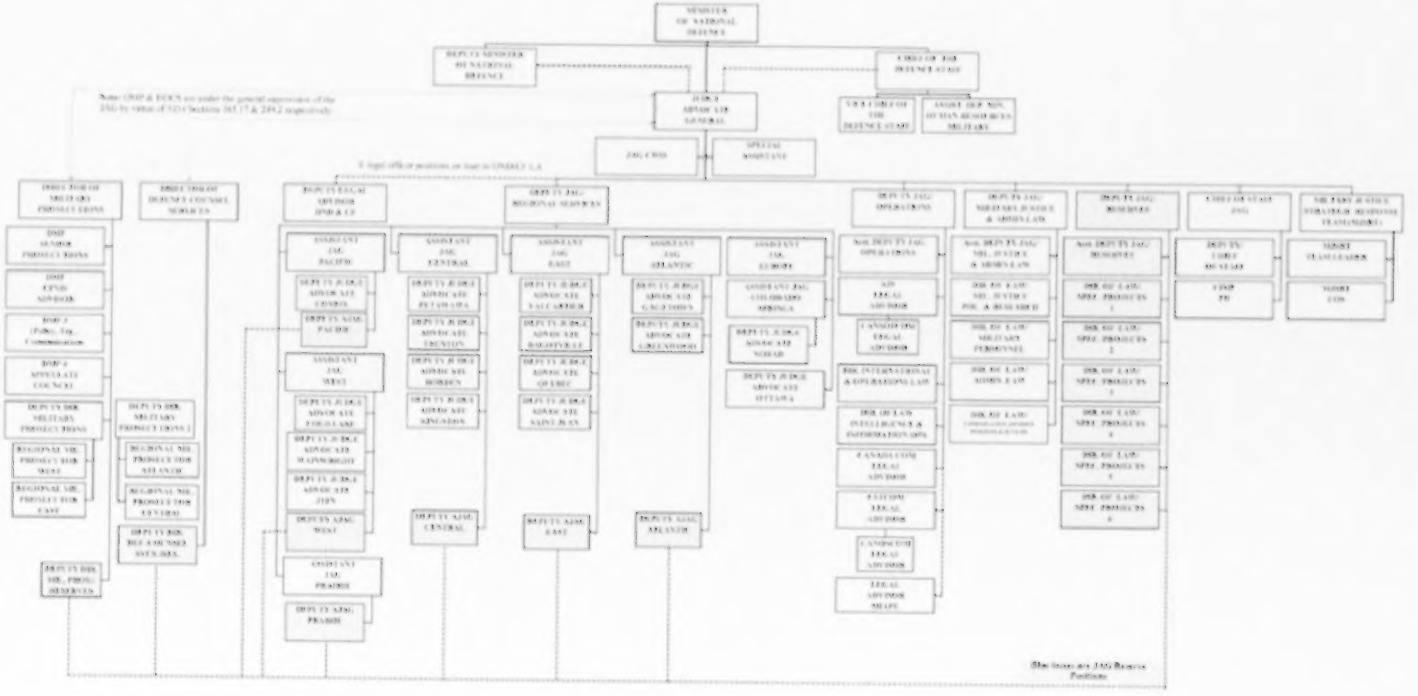
Military Justice Strategic Response Team (MJSRT)

The MJSRT was established in February 2010 as a stand-alone team reporting directly to the JAG. The team is responsible for addressing a wide range of policy and legislative initiatives relating to military justice, including the reintroduction of the legislative response to the Lamer Report recommendations in June 2010 (Bill C-41), the regulatory amendments that would be required as a result of these amendments, and facilitating the work of the next independent review of Bill C-25 (S.C. 1998, c.35) and Bill C-60 (S.C. 2008, c. 29). On 1 April 2011, many of the MJSRT roles and responsibilities were assumed by a permanent directorate created under the name Directorate of Law/ Military Justice Strategic that was established within the newly created Military Justice Division.

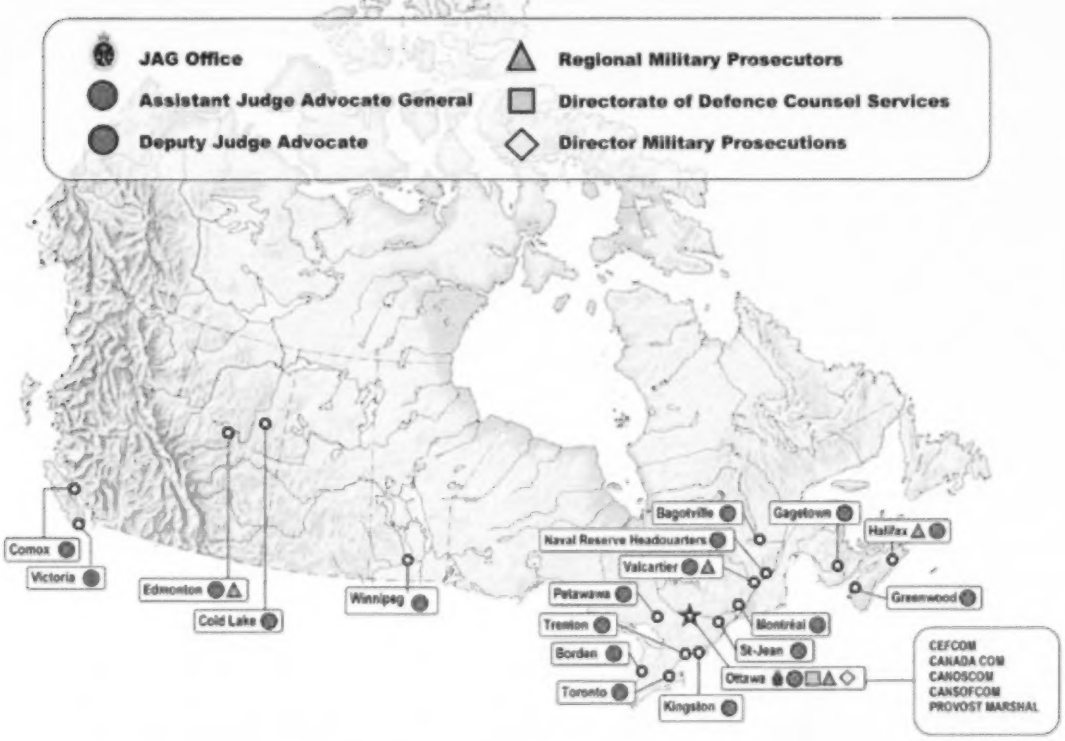
Legal Officers Serving Outside the Office of the JAG

In addition to the legal officers serving in the above-mentioned organizations, a number of legal officers serve outside the Office of the JAG. This includes those working at the Canadian Forces Military Law Centre (CFMLC) in Kingston, Ontario – the CAF's military legal education organization – and the Office of the Legal Advisor to the Department of National Defence and Canadian Forces (DND/CF LA) – a Department of Justice Legal Services Unit – in Ottawa.

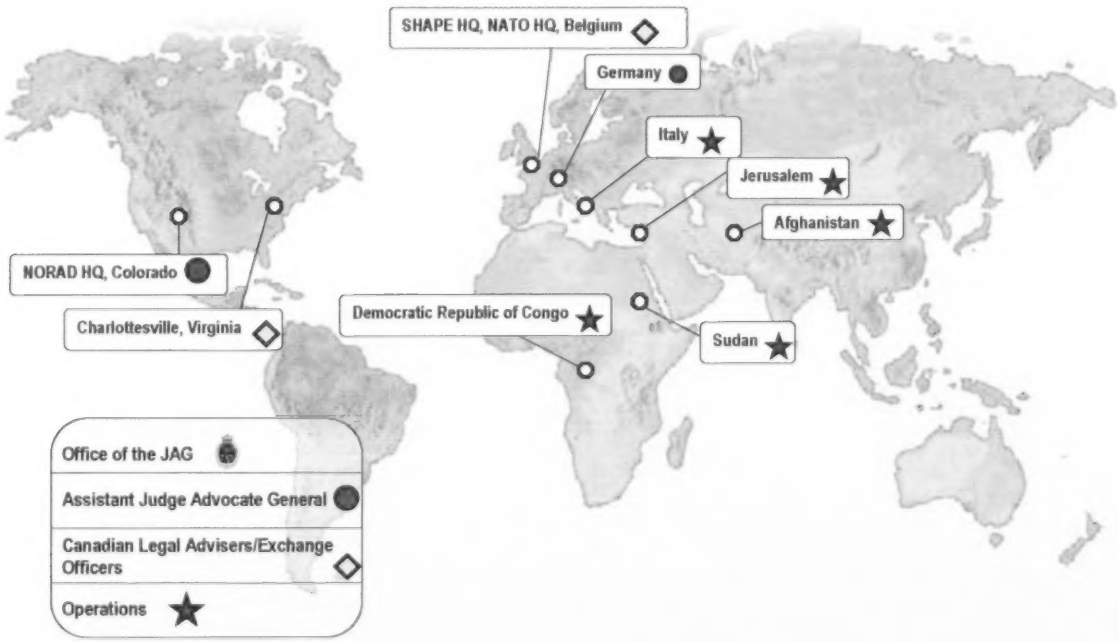
Organization Chart
OFFICE OF THE JUDGE ADVOCATE GENERAL



CANADIAN OFFICES OF THE JUDGE ADVOCATE GENERAL



OFFICES OF THE JUDGE ADVOCATE GENERAL OUTSIDE CANADA



2 JAG MISSION & VISION

In January 2011, the Judge Advocate General (JAG) and his senior leadership team unveiled a new strategic guidance document to all civilian and military members of the Office of the JAG (OJAG). The new JAG Mission and Vision was the result of months of analysis, discussions, and examination of lessons learned, as well as consultations with senior Canadian Armed Forces (CAF) and departmental officials, including the Minister of National Defence, the Chief of Defence Staff, and the Deputy Minister.

The intent was to provide a clear and unified policy touchstone, against which all future OJAG activities could be measured. The desired outcome was to orient all members of the OJAG, military and civilian, toward the same goals, and to ensure that in pursuing those goals, members of the OJAG could refer to a shared set of principles to guide and shape their actions. Put simply, if the work being done by OJAG personnel cannot be linked to the strategic objectives set out in the Mission and Vision, then it may be time to re-examine the nature of that work, and/or how it is being carried out.

The impact of the Mission and Vision has been significant. It has given members of the OJAG a common direction, and it has assisted in significantly reducing the expenditure of precious resources on "ad hoc" and unplanned activities. Furthermore, it has publicly highlighted how important it is to take care of our people. As a "low-density, high-demand" resource, legal officers and supporting personnel can easily be tasked beyond capacity in an effort to keep up with insatiable demand for military legal services in both official languages. The new direction specifically recognizes this reality and works to harmonize the competing interests of institutional demand for the provision of legal services and the well-being of the members of the OJAG.

The members of the OJAG are operationalizing the Mission and Vision to improve their effectiveness, well-being, and the quality of their service to Canada. They are doing this by setting priorities in a more focussed manner, by seeking work-life balance, by providing advice in a more targeted and concise manner, and by planning ahead to better align resources with demand.

MISSION

In support of the Canadian Armed Forces and the Department of National Defence, the Office of the Judge Advocate General delivers independent, operationally focussed, solution oriented legal advice and services across the full spectrum of military law, and superintends the administration of military justice.

VISION

To be an agile military team of world class, operationally focussed, globally deployable and networked legal professionals, proudly contributing to a disciplined force and mission success in a manner that reflects Canadian values and the rule of law.

JUDGE ADVOCATE GENERAL'S INTENT

The Office of the JAG will become more responsive, relevant and effective in enabling the Canadian Armed Forces, the Department of National Defence and Canada in achieving mission success. Responsiveness will be enhanced through the delivery of dynamic, timely, solution oriented and operationally focussed legal advice and services, particularly in times of crisis at home and around the world.

Strategic legal engagement and outreach both inside the Canadian Armed Forces and the Department of National Defence, and with key external partners, will enhance the relevancy of our work. The Office will be more effective through the adaptation and optimization of its highly motivated, world class team of specialized legal professionals and support personnel. This is a team that has and will continue to provide legal services across the full spectrum of Canadian Armed Forces operations, especially in deployed joint interoperable missions in Canada and worldwide.

At the same time, as the superintendent of the administration of military justice, the Judge Advocate General, with the support of the legal officers, will ensure that as the military justice system evolves it remains a unique, fair and efficient self-contained system that is an integral part of the Canadian legal system. The Office of the JAG will proactively support the chain of command on legal and legal policy matters impacting on discipline, while being direct and fearless in promoting the rights and interests of Canadian Armed Forces members in individual disciplinary cases.

The JAG draws upon the first-hand experience of his JAG CWO, CWO Gaudreau, in military justice matters.

To carry out the JAG's intent, the Office of the JAG will rely on the members of a unique institution who serve in, and are accountable to, the professions of arms and the law. This team of independent, specialized, networked, mobile professionals will provide the legal advice and services required by the chain of command and the military justice system, often in profound circumstances where life or liberty are at stake.

Importantly, it must be recognized that in executing this intent, our people and their families are essential to everything that we do. We must continue to improve how we recruit, train, educate, develop, deploy and employ our professionals to ensure we are properly focussed on our operational missions and the maintenance of the rule of law. Individual and family welfare will be a crucial consideration in leadership decisions made at all levels. We simply cannot achieve mission success without taking proper care of our people.

To achieve the JAG mission and vision, the Office of the Judge Advocate General will be:

- A responsive, force enabling provider of legal advice and services in all areas of military law, including all areas pertaining to military operations, whether domestic or international.
- A force for proactive military justice oversight, responsible development and positive change.
- A dynamic world class team of specialized professionals and support personnel that punches well above its weight.
- Vigilant in leading and caring for our people and their families.

STRATEGIC GOAL #1

Deliver responsive, force-enabling legal advice and services in all areas of military law.

Operational, policy and administrative authorities are entrusted with the responsibility to make decisions, including those respecting the professional lives of Canadian Armed Forces members, life and liberty, and the role Canada plays in the world. Such decisions often involve significant risk and conflicting priorities, and may have to be made in days, hours or minutes in a dynamic environment. The responsibility of these decision-makers is profound. It is in this context that the Office of the Judge Advocate General must deliver responsive, force-enabling legal advice and services in all areas of military law in a manner that achieves the following four strategic objectives.

Strategic Objectives

1.1 Provide operationally focussed, solution oriented, independent legal advice and services.

1.2 Champion fairness, effectiveness and efficiency in the application of military discipline.

1.3 Promote the fair, just, effective and responsive administration of the Canadian Armed Forces and the Department of National Defence.

1.4 Effect strategic legal engagement

LCol MacGregor delivers an address to the Canadian Bar Association while the Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada, looks on.

STRATEGIC GOAL #2

Lead proactive military justice oversight, responsible development and positive change.

Military justice is a unique, self-contained system that is an integral part of the Canadian legal mosaic. This strategic goal and subordinate objectives reflect the Judge Advocate General's superintendence, reporting and review functions set out in the *National Defence Act*. The Office of the Judge Advocate General performs this legislatively mandated stewardship function in furtherance of the operational mandate of the Canadian Armed Forces and the requirement of the military justice system to both be, and be seen as a fair adjudicative system.

Strategic Objectives

2.1 Discharge the statutorily mandated superintendence function in a manner that facilitates the fair and efficient administration of Canada's military justice system.

2.2 Advance the principled development of the military justice system ensuring it continues to be fair, efficient and responsive to the unique needs of the Canadian Armed Forces within Canada's free and democratic society.

2.3 Promote a broad understanding of the military justice system.

STRATEGIC GOAL #3

Optimize a dynamic world class team of specialized legal professionals and support personnel that punches well above its weight.

Legal Officers complete intermediate training on military justice, administrative law, and, as in this photo, field-based operational law.

We are a low-density high demand team of military and civilian professionals. We are world class in many areas, and this has allowed us to lead in the shaping of domestic and international legal frameworks, which in turn has facilitated Canadian Armed Forces, Departmental and Governmental mission success. Our core strength is our people and their expertise. The Office of the JAG intends to enhance its effectiveness by ensuring our ability to deliver independent legal advice is preserved. The Office of the JAG will develop all aspects of resource allocation, career progression and legal knowledge and expertise, in a planned, proactive and structured way that is neither ad hoc nor crisis driven.

Strategic Objectives

3.1 Preserve and promote the independence required to ensure the delivery of candid legal advice from a military perspective.

3.2 Achieve high levels of efficiency and effectiveness in furtherance of all strategic goals.

3.3 Attract, develop, train, educate, retain and empower high quality professionals to achieve excellence in all areas of military law.

3.4 Demonstrate legal knowledge management and legal information mastery.

STRATEGIC GOAL #4

Be vigilant leaders in caring for our people and their families.

As a low density, high demand organization, the requirement for our legal services has consistently exceeded our resources, imposing significant stress on our people. While our people have always stepped up and met the challenge, it has come at a cost--to them and to their families. In keeping with the Judge Advocate General's intent, we will be operationally focussed and solution oriented. At the same time, we will ensure that we are able to care for and support our people, military and civilian – recognizing that they are the core strength of the organization and fundamental to our ability to meet all other strategic goals. Individual and family welfare will be an important consideration in leadership decisions taken at all levels. Innovative and novel means of balancing the unique, and often unavoidable, stresses of military service will be actively pursued in advancing the well-being of our people and their families.

Strategic Objectives

4.1 Create a working environment that will allow people to maintain a reasonable balance between their home life and workplace responsibilities.

4.2 Responsibly prioritize taskings and resource accordingly.

This strategic goal is also complemented by the JAG Work-Life Balance Directive that was significantly updated in November 2010.

Military and civilian members of the Office of JAG participate in the Red Shirt Walk-Run in support of those who support the CAF.

3 CANADA'S MILITARY JUSTICE SYSTEM

Canada's military justice system is a separate and parallel system of justice that exists within and forms an integral part of the laws of Canada. It shares many of the same underlying principles with the civilian criminal justice system, and it is subject to the same constitutional framework, including the *Canadian Charter of Rights and Freedoms*. Indeed, the military justice system is expressly recognized in the *Charter*. It is committed to fairness, equality before the law, and the fundamental values of justice and due process. The necessity and legitimacy of the system has, on several occasions, been affirmed by the Supreme Court of Canada (SCC).

Importantly, where the military justice system differs from its civilian counterpart is in its objectives. In addition to ensuring that justice is administered fairly and the rule of law is respected, the military justice system is also designed to promote the operational effectiveness of the Canadian Armed Forces (CAF) by contributing to the maintenance of discipline, efficiency, and morale. These dual objectives of discipline and justice give rise to many of the substantive and procedural differences that properly distinguish the military system from the civilian system.

The ability of Canada's military to operate effectively depends on the ability of its leadership to instil and maintain discipline. While training and leadership are central to the maintenance of discipline, the chain of command must also have a legal mechanism that it can employ to investigate and sanction disciplinary breaches that require a formal, fair, and prompt response. As the SCC observed in 1992, in *R. v. Généreux*, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. [...] There is thus a need for separate tribunals to enforce special disciplinary standards in the military." The military justice system is designed to meet those unique needs articulated by the Supreme Court of Canada.

THE STRUCTURE OF THE MILITARY JUSTICE SYSTEM

Code of Service Discipline and Service Offences

The Code of Service Discipline (CSD), which forms Part III of the *National Defence Act* (NDA), is the bedrock of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences that are essential to the maintenance of discipline and effectiveness. It also sets out the punishments, powers of arrest, and the organization and procedures for service tribunals, appeals, and post-trial review.

The term "service offence" means "an offence under the *National Defence Act*, the *Criminal Code*, or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline." Thus, service offences include many disciplinary offences that are unique to the profession of arms, such as disobedience of a lawful command, absence without leave, and conduct to the prejudice of good order and discipline, in addition to more conventional penal offences that are created by the *Criminal Code* and other Acts of Parliament. The diverse scope of service offences that fall within the CSD permits the military justice system to foster and promote the dual ideals of discipline and justice within the CAF.

Members of the Regular Force of the CAF are subject to the CSD at all times in Canada and abroad. In addition, members of the Reserve Force are also subject to the CSD in circumstances specified under the NDA. Civilians may also be subject to the CSD in limited circumstances.

Investigations and Charge Laying

Where there are reasons to believe that a service offence has been committed, an investigation is conducted to determine whether there may be sufficient grounds to lay a charge. If the complaint is of a serious or sensitive nature, the Canadian Forces National Investigation Service (CFNIS) will examine the complaint and investigate as appropriate. Otherwise, investigations are conducted by Military Police or by non-Military Police CAF members at the unit level where the matter is often minor in nature.

Unit legal advisors are often required to review disciplinary investigations and provide charge layers with legal advice before any charges are laid.

An officer or non-commissioned member having authority to lay a charge is required to obtain advice from a legal officer from the Office of the JAG before laying a charge in respect of an offence that is not authorized to be tried by summary trial under regulations, is alleged to have been committed by an officer or a non-commissioned member above the rank of sergeant or, if a charge were laid, would give rise to a right to elect to be tried by court martial. The legal advice shall address the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge.

Summary Trials

The military justice system has a two-tiered tribunal structure, which is composed of the summary trial system and the court martial system. The purpose of these two kinds of service tribunals is to provide prompt, fair and portable justice in respect of service offences. These service tribunals may be held wherever the CAF is located, whether it is at a garrison/Base/Wing, at sea, in an exercise area, or deployed in a foreign country. In other words, the CSD follows any person subject to the CSD everywhere, at all times.

The summary trial is the most commonly used form of service tribunal. During the reporting period, there were 1770 summary trials, representing 96% of all service tribunals. The summary trial process usually allows for more minor service offences to be tried and disposed of by the unit.

Summary trials are presided over by commanding officers, delegated officers, or superior commanders. The commanding officer who normally exercises jurisdiction is the commanding officer of the accused person. A delegated officer is an officer to whom a commanding officer has delegated powers of trial and punishment with or without limitations. Superior commanders may try officers below the rank of lieutenant-colonel and non-commissioned members above the rank of sergeant. Before presiding over summary trials, these officers must be trained in the administration of the CSD and be certified as qualified to perform these duties by the JAG.

The jurisdiction of officers presiding at summary trial over accused persons is limited by the type of offences that presiding officers may try. The disposition of charges by summary trial is also meant to occur expeditiously. Accordingly, a presiding officer may not try an accused person by summary trial unless the trial commences within one year after the day on which the service offence is alleged to have been committed.

The procedures at a summary trial are straightforward and the powers of punishment are limited in scope. This restriction on the severity of punishments reflects both the often minor nature of the offences involved, and the intention that the punishments be primarily corrective in nature. As soon as possible after a charge has been laid, an assisting officer is appointed under the authority of a commanding officer to assist the accused in the preparation of his or her case and during the trial.

All accused persons found guilty at summary trial have the right to request a review of a finding and/or punishment imposed. The findings and punishment may also be reviewed on the independent initiative of a review authority. The review authority is a more senior officer in the chain of command than the presiding officer and is designated by regulations. Legal advice must be obtained by the review authority before making a determination in respect of a request for review.

Although the summary trial is the predominant type of service tribunal, there are offences for which an officer presiding at summary trial has no jurisdiction to deal with, and that must therefore be tried by court martial. Some cases may also be too serious or complex to be dealt with by summary trial. In those cases, the matter will be forwarded to the Director of Military Prosecutions, who will decide whether to prefer the charge for trial by court martial.

Except for cases involving a limited number of prescribed offences whose surrounding circumstances are sufficiently minor (for example, cases of insubordinate behaviour, absence without leave, and drunkenness), or those cases where there is no jurisdiction to deal with specific offences at summary trial, an accused person by right will be offered an election to be tried by court martial. Before exercising this right, the accused will have the opportunity to consult with legal counsel from the CAF's Defence Counsel Services free of charge or civilian legal counsel at the accused's own expense. During the reporting period, accused members elected trial by court martial 49 times out of the 663 cases in which an election was offered. The relatively low number of elections for trial by court martial is consistent with past years, and is strongly indicative of the perceived fairness of the summary trial process.

Courts Martial

The court martial – a formal military court presided over by a military judge – is designed to deal with more serious offences. During the reporting period, 69 courts martial were held. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts and have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all "matters necessary or proper for the due exercise of its jurisdiction."

Defence Counsel arrive at the permanent courtroom facility in Asticou, QC; Defence Counsel are offered to an accused for court martial at Crown expense.

At a court martial, the prosecution is conducted by a legal officer from the Canadian Military Prosecution Service. The accused is entitled to have legal counsel appointed by the Directorate of Defence Counsel Services at no cost to the accused, or, at his or her own expense, by civilian counsel. The accused can also choose not to be represented by a lawyer.

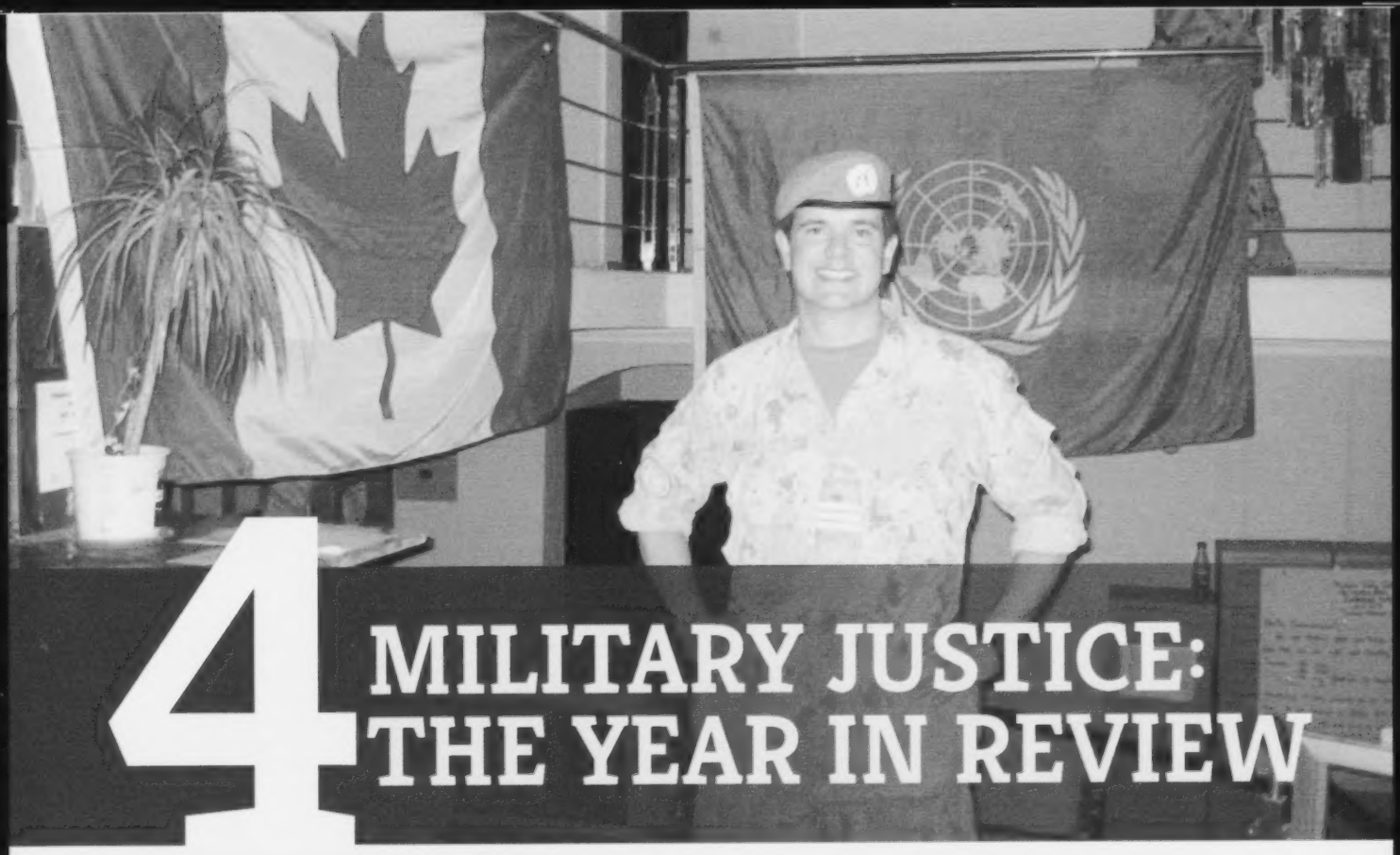
The NDA provides for two types of court martial: General Courts Martial and Standing Courts Martial. The General Court Martial is composed of a military judge and a panel of five CAF members. The panel of CAF members is selected randomly and is governed by rules that enhance the specific character of military panels. At a General Court Martial, the panel makes the finding on the facts and the military judge makes all legal rulings and imposes the sentence. At a Standing Court Martial the military judge sits alone and makes the findings, and where the person is convicted, imposes a sentence. Panels must reach unanimous decisions, namely, on findings of guilt.

Appeal of a Court Martial Decision

Decisions made at courts martial may be appealed to the Court Martial Appeal Court of Canada (CMAC), a court composed of selected civilian judges who were designated as such from the Federal Court of Canada and the Federal Court of Appeal, as well as civilian judges of the Superior Courts and Courts of Appeal of the Provinces and Territories. Both an accused tried by court martial and the Minister of National Defence may appeal to the CMAC.

CMAC decisions may be appealed to the Supreme Court of Canada on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.

A complete overview of military justice statistics during the 2010-2011 reporting period is provided at the Annex of this report.



4 MILITARY JUSTICE: THE YEAR IN REVIEW

Military justice continuously evolves in order to remain consistent with changes in military and societal justice expectations, and in the criminal law. However, the system's commitment to the promotion of the rule of law and maintenance of discipline within the Canadian Armed Forces (CAF) remains constant.

This chapter discusses the events and initiatives that had the greatest impact on the evolution of the military justice system in the course of the 2010-2011 reporting period, including important court martial and appeal cases, legislative and regulatory initiatives and policy initiatives undertaken by the Office of the Judge Advocate General.

IMPORTANT COURT AND TRIBUNAL CASES

R. v. Semrau

The Semrau court martial is notable for its high public profile and the seriousness of the charges involved. This proceeding visibly illustrated that the military justice system is transportable. It demonstrated the reach of the Code of Service Discipline (CSD). It involved allegations of acts, that if proven would constitute criminal homicide, that fall within the parameters of a service offence since they were alleged to have been committed outside of Canada. It showed the importance of having deployable service tribunals, specifically courts martial that are capable of travelling to operational theatres in circumstances of armed conflict to hear evidence that might not otherwise have been brought before a court in Canada.

Second Lieutenant (2Lt) Semrau (at the time a Captain) was a member of the Operational Mentoring and Liaison Team assigned to the 2nd Kandak (Battalion) of the Afghan National Army (ANA). On 19 October 2008, during a patrol in Helmand Province, 2Lt Semrau was alleged to have fired his rifle into the body of a severely wounded suspected Taliban insurgent.

Following an investigation by the Canadian Forces National Investigation Service, 2Lt Semrau was arrested on 30 December 2008, retained in custody, and repatriated back to Canada. On 17 September 2009, four charges were preferred by the Director of Military Prosecutions against 2Lt Semrau: second degree murder, attempt to commit

murder with a firearm, cruel or disgraceful conduct and negligent performance of duties. As part of the proceedings, the ensuing court martial spent two weeks in Afghanistan hearing testimony from a number of witnesses.

On 19 July 2010, 2Lt Semrau was convicted of disgraceful conduct, but acquitted of second degree murder attempted murder and negligent performance of duties. On 5 October 2010, he was sentenced to dismissal from Her Majesty's service and a reduction in rank from Captain to 2Lt.

R. v. Wilcox

R. v. Wilcox is another case involving a CAF member facing serious charges as the result of a death that occurred in Afghanistan.

On 6 March 2007, Corporal (Cpl) Megeney and Ex-Cpl Wilcox were working at Kandahar Airfield in Afghanistan where they shared an accommodation tent. On that day, a shot was heard coming from their tent, and Ex-Cpl Wilcox was found holding the body of Cpl Megeney, who had a single gunshot wound to the chest from which he eventually died.

Ex-Cpl Wilcox was charged with three offences under the CSD: manslaughter, criminal negligence causing death, and negligent performance of a military duty. On 30 July 2009, Ex-Cpl Wilcox was found guilty by a General Court Martial of criminal negligence causing death and negligent performance of a military duty and was sentenced to four years of imprisonment and dismissal from Her Majesty's Service. Ex-Cpl Wilcox appealed both the finding and the sentence imposed. At the appeal, questions were raised regarding the composition of the court martial panel that convicted him and on 7 December 2009, the CMAC set aside the convictions, ordering a new trial. The same charges were preferred again on 29 October 2010 and on 14 February 2011, the Court Martial Administrator convened a Standing Court Martial to begin on 26 April 2011. The results of this court martial will be discussed in next year's annual report.

R. v. Szczerbaniwicz

The case of Lieutenant-Colonel (LCol) Szczerbaniwicz is notable as a court martial decision that was appealed to the Supreme Court of Canada (SCC). The SCC ultimately upheld the military judge's original finding.

LCol Szczerbaniwicz was convicted at Standing Court Martial of common assault arising from a domestic altercation with his estranged spouse. He appealed the conviction on the grounds that, amongst other things, the military judge misconstrued the law with respect to the defence of property and the use of excessive force. On 5 May 2009, the majority of the CMAC dismissed the appeal, with one judge dissenting on the issue of the defence of property.

LCol Szczerbaniwicz appealed, as of right, to the SCC. On 6 May 2010, the SCC dismissed the appeal. The majority of the court found that the military judge had not erred and that LCol Szczerbaniwicz had employed excessive force to rely upon the defence of protection of property.

LEGISLATIVE AND REGULATORY INITIATIVES

Bill C-41: Strengthening Military Justice in the Defence of Canada Act

Bill C-41 would have represented the most comprehensive proposed revision of Canada's military justice system since Bill C-25 in 1998. Based on the report of the former Chief Justice of Canada, the late Right Honourable Antonio Lamer, and the report of Standing Senate Committee on Legal and Constitutional Affairs (SCOLCA), "Equal Justice: Reforming Canada's System of Courts Martial", the Bill's proposed changes would have further ensured the fairness

of the military justice system by providing for greater independence for military judges and granting them a wider range of sentencing options including absolute discharges, intermittent sentences, and restitution. The Bill also addressed the practical needs of the military justice system by allowing for the formation of a panel of Reserve Force military judges and expanding the pool of CAF members eligible to sit on a court martial panel. Furthermore, the Bill clarified the position and delineated the responsibilities of the Canadian Forces Provost Marshal (CFPM) and allowed for more effective resolution processes for grievances and complaints involving the Military Police. Bill C-41 reached Report Stage back to the House of Commons after consideration by the Standing Committee on National Defence, but died on the Order Paper when Parliament was dissolved on 26 March 2011 upon the calling of an election.

Bill S-2: Protecting Victims from Sex Offenders Act

Bill S-2: Protecting Victims from Sex Offenders Act (S.C. 2010, c.17) makes a number of amendments to the national registry of sex offenders created by the *Sex Offender Information Registry Act* (SOIRA). In particular, under the provisions of the Bill, individuals found guilty of a sexual offence under the CSD are now automatically registered in the national registry, and samples of their DNA are taken for forensic analysis. The Office of the JAG worked with Public Safety Canada and Justice Canada to make the necessary amendments to the NDA and *Queen's Regulations and Orders for the Canadian Forces*.

POLICY INITIATIVES

Detention Barrack Regulations

Rehabilitation is an essential aim of military justice. The goal of the system is not simply to punish wrongdoers, but to rehabilitate them into valuable members of the CAF. The Canadian Forces Service Prison and Detention Barracks (CFSPDB) enables the CAF to achieve this aim. Working in conjunction with the CFPM, the Office of the JAG has initiated a revision and modernization of the CAF's detention barrack regulations. This is the first review of the rules since they came into force in 1967. The proposed changes to the regulations include amendments to enhance compliance with the *Charter of Rights and Freedoms*.

Delay Regulations and Practices

The ability to deal with a case in an efficient, timely manner is one of the hallmarks of an effective military justice system. The Office of the JAG is continuing its work to improve the efficiency of the military justice system by studying options for new regulations and practices to reduce unnecessary delays from the various actors in the military justice system.

Mental Health Issues and PTSD

Recent years have seen a growing awareness of the unique challenges posed by mental health issues in the CAF and military justice system, particularly issues surrounding operational stress injuries, including Post-Traumatic Stress Disorder (PTSD). The Office of the JAG is engaged in an ongoing effort to better understand these challenges and develop solutions that serve the needs of both the chain of command and individual CAF members.

Second Independent Review Authority (SIRA)

Bill C-25 requires the Minister of National Defence (MND) to conduct an independent review of the provisions and operation of the Bill every five years, and to table a report of the review in Parliament. On 25 March, 2011, the MND appointed the Honourable Patrick J. LeSage, retired Chief Justice of the Ontario Superior Court of Justice, to conduct the second independent review of Bill C-25 (S.C. 1998, c.35), as well as to conduct a review of Bill C-60 (S.C. 2008, c. 29). The SIRA will visit CAF bases across Canada to meet with individuals who have comments about the subjects under review, and to receive feedback on how the changes made by Bill C-25 and Bill C-60 are functioning. The Office of the JAG worked to ensure that SIRA had unrestricted access to the information and individuals necessary to carry out his review. The results of the SIRA review will be discussed in subsequent Annual Reports.

Showing the flag while deployed in Afghanistan.

Military Justice Issues During Operations

The need for portability and deployability of the military justice system creates a unique set of challenges. In order to ensure the system is capable of maintaining discipline and delivering justice in the often austere conditions of overseas deployments, the Office of the JAG is seeking to clarify the roles and jurisdictions of participants in the system. In particular, the Office of the JAG is working to develop policies regarding the delegation of commanding officers' authority to preside over summary trials and lay charges.

Military Justice Training Material

Throughout the reporting period, the Office of the JAG has been working with the Canadian Defence Academy and the Military Law Centre to update military justice training material to ensure it keeps pace with the evolving military justice system. In particular, training material was revised to take into account changes brought about by Bill C-60 (S.C. 2008, c. 29).

CWO Gaudreau - JAG CWO - delivers an address to the audience.

5 THE WAY AHEAD

The 2010-2011 reporting period has been a very active time for military justice and the Office of the Judge Advocate General, and the following year promises to be no different. In keeping with the JAG's Mission and Vision Statement, the Canadian Armed Forces (CAF) legal officers will continue to lead proactive military justice oversight, responsible development and positive change.

In the coming year, the Office of the JAG will strive to improve the fairness, efficiency, and effectiveness of the military justice system, bringing many of the initiatives commenced in 2010-2011 to fruition, and embarking on many more. Of particular note for the subsequent reporting period are the following projects, which are anticipated to be the Office of the JAG's main efforts to further improve the military justice system.

Amendments to the National Defence Act (NDA) and to Queen`s Regulations and Orders for the Canadian Forces

The NDA, and in particular the Code of Service Discipline, forms the legislative foundation of the military justice system. It sets out service offences and punishments, prescribes military jurisdiction and defines the procedure for service tribunals. The last time the NDA underwent a comprehensive revision was Bill C-25 in 1998. Since then the Lamer report on military justice, and the Standing Senate Committee on Legal and Constitutional Affairs report have each issued a series of recommendations for reform that provided the impetus for Bill C-41, the *Strengthening*

Military Justice in the Defence of Canada Act. The Office of the JAG is committed to assisting the Minister of National Defence (MND) and the Government of Canada in moving the legislative process of military justice reform forward.

In addition to the comprehensive reform package set out in Bill C-41, it is anticipated that smaller, more focussed, amendments to the NDA may also be required in the course of the subsequent reporting period. In particular, the issue of the renewable tenure of military judges, which has been the subject of differing opinions at the court martial level, may be addressed by the CMAC.

Office of the JAG. Our military justice system is constantly evolving, and the independent review process is instrumental in providing guidance and direction for that evolution.

Conclusion

Our military justice system is designed to meet the interrelated objectives of justice and discipline. It must provide a relevant and useful tool to the CAF chain of command for maintaining discipline and ensuring operational effectiveness, and do so in a manner that is fair to all those involved while embodying the rule of the law and Charter values. As the statistics and initiatives outlined in this report demonstrate, the JAG continues to professionally and passionately superintend the system, and the Office of the JAG is well positioned, as Canada's experts on military justice and military law, to lead proactive change that will ensure that our military justice system will continue to meet those objectives well into the future. Canada's military justice system is second to none and serves as a leading example world-wide.

Legal Officers consult with one another regarding proposed NDA amendments.

Military Justice – Independent Review

During the 2011-2012 reporting period, the Honourable Patrick J. LeSage, acting as the Second Independent Review Authority (SIRA), will be visiting defence establishments across the country, interviewing key stakeholders and preparing a report and recommendations for further amendments to the military justice system. The results of the SIRA process are keenly anticipated by the MND, the CAF, the Department of National Defence and all members of the

ANNEX: MILITARY JUSTICE STATISTICS

Note: (1) The statistics in this annex are current as of 1 March 2013.
(2) For statistics relating to prior years, refer to previous JAG Annual Reports.

SUMMARY TRIALS, COURTS MARTIAL AND APPEALS

Year in Review – Statistics:

1 April 2010 – 31 March 2011

SUMMARY TRIALS REPORTING

1 April 2010 – 31 March 2011

Distribution of Service Tribunals

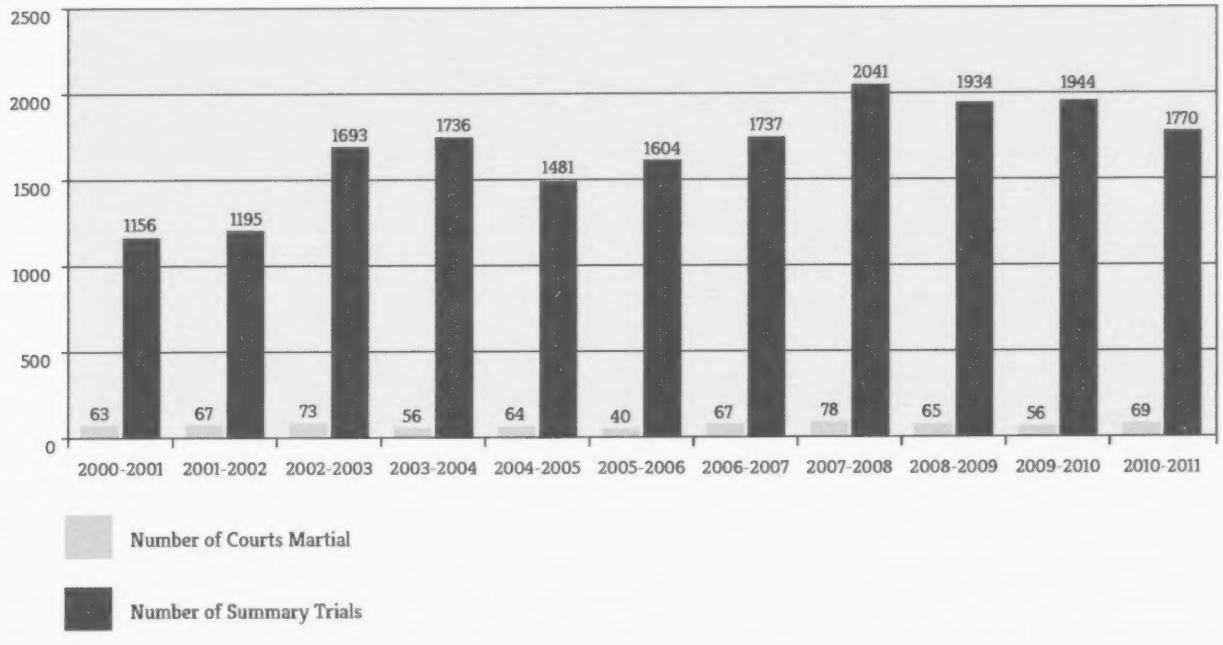
	2009-2010		2010-2011	
	#	%	#	%
Number of courts martial	56	3	69*	4
Number of summary trials	1944	97	1770	96
Total	**2000**	**100**	**1839**	**100**

* There were 69 courts martial and 70 accused (one joint trial).

Language of Summary Trials

	2009-2010		2010-2011	
	#	%	#	%
Number in English	1433	74	1319	75
Number in French	511	26	451	25
Total	**1944**	**100**	**1770**	**100**

Distribution of Disciplinary Proceedings Year to Year Comparison



Referral and Disposal of Charges

	2010-2011	
	#	%
Cases proceeded with at summary trial	1770	91.23
Cases not proceeded with at summary trial	7	0.36
Cases referred for disposal by court martial		
Election by accused	49	2.53
Direct referral	114	5.88

Elections to Court Martial

	2009-2010		2010-2011	
	#	%	#	%
Number of elections offered to be tried by courts martial	578	4.67	663	7.39

Summary Trials by Rank

	2009-2010		2010-2011	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1748	89.91	1542	87.12
Sergeant to Chief Warrant Officer	71	3.65	64	3.62
Officer	125	6.44	164	9.26
Total	**1944**	**100**	**1770**	**100**

*Master Corporal is not a rank, it is an appointment pursuant to QR&O article 3.08.

Summary of Charges

NDA Article	Description	2009-2010		2010-2011	
		#	%	#	%
83	Disobedience of lawful command	55	2.13	66	2.80
84	Striking or offering violence to a superior	3	0.12	5	0.21
85	Insubordinate behaviour	87	3.36	97	4.11
86	Quarrels and disturbances	64	2.47	42	1.80
87	Resisting or escaping from arrest or custody	4	0.15	7	0.30
90	Absence without leave	716	27.68	733	31.05
91	False statement in respect of leave	2	0.08	1	0.04
93	Cruel or disgraceful conduct	5	0.19	4	0.17
95	Abuse of subordinates	11	0.43	13	0.55
96	Making false accusations or statements or suppressing facts	1	0.04	0	0.00
97	Drunkenness	173	6.69	130	5.51
98	Malingering or Maiming	0	0	1	0.04
101	Escape from custody	0	0	4	0.17
101.1	Failure to comply with conditions	8	0.31	3	0.13
108	Signing inaccurate certificate	1	0.04	0	0.00
111	Improper driving of vehicles	4	0.15	7	0.30
112	Improper use of vehicles	12	0.46	9	0.38
113	Causing fires	0	0	1	0.04
114	Stealing	21	0.81	33	1.40
115	Receiving	2	0.08	1	0.04
116	Destruction, damage, loss or improper disposal	17	0.66	7	0.30
117	Miscellaneous offences	14	0.54	2	0.08
124	Negligent performance of military duty	1	0.04	2	0.08
125	Offences in relation to documents	8	0.31	23	0.97
127	Injurious or destructive handling of dangerous substances	2	0.08	3	0.13
129*	Conduct to the prejudice of good order and discipline – Negligent discharge	523	20.21	442	18.71
129*	Conduct to the prejudice of good order and discipline (Excluding negligent discharge)	813	31.41	691	29.25
130	Service trial of civil offences	41	1.60	35	1.48
Total		**2588**	**100**	**2362**	**100**

*Annual reports for previous years have shown different categories of breaches for offences under section 129, including misconduct of a sexual nature and harassment, and misconduct related to drugs and alcohol. This report now shows two categories under section 129: offences relating to the negligent discharge of a weapon, and other offences under section 129. For further information on charges under section 129, see Notes A to G of article 103.60 of the QR&O (http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-02/chapter-chapitre-103-eng.asp#cha-103-60)

Summary Trials by Command

	2009-2010		2010-2011	
	#	%	#	%
Vice Chief of the Defence Staff	3	0.15	4	0.22
Canada Command	50	2.57	31	1.75
Canada Operational Support Command	1	0.05	2	0.17
Canada Special Operations Forces Command	23	1.18	16	0.90
Canada Expeditionary Force Command	196	10.08	247	13.96
Chief of the Maritime Staff	271	13.94	260	14.69
Chief of the Land Staff	858	44.13	712	40.19
Chief of the Air Staff	71	3.65	88	4.97
Chief of Military Personnel	469	24.12	399	22.55
Assistant Deputy Minister (Information Management)	0	0	8	0.45
Assistant Deputy Minister (Material)	2	0.10	3	0.16
Total	**1944**	**100**	**1770**	**100**

Findings by Charge

	2009-2010		2010-2011	
	#	%	#	%
Guilty	2353	90.92	2195	92.92
Guilty – Special Finding	3	0.20	15	0.64
Guilty of included offence	7	0.27	0	0.00
Not guilty	140	5.41	95	4.02
Charge stayed	76	2.95	47	1.99
Charge not proceeded with	9	0.35	10	0.42
Total	**2588**	**100**	**2362**	**100**

Punishments

	2009-2010		2010-2011	
	#	%	#	%
Detention (suspended)	6	0.24	7	0.30
Detention	47	1.87	56	2.40
Reduction in rank	3	0.12	3	0.13
Severe reprimand	2	0.08	4	0.17
Reprimand	62	2.47	50	2.14
Fine	1515	60.34	1459	62.52
Confinement to ship or barracks	681	27.10	575	24.66
Extra work and drill	131	5.22	121	5.19
Stoppage of leave	22	0.88	23	0.99
Caution	42	1.67	35	1.50
Total	**2511**	**100**	**2333**	**100**

Note: More than one type of punishment may be awarded in a sentence.

Requests for Review

	2009-2010		2010-2011	
	#	%	#	%
Requests for review based on finding	19	48.71	11	31.44
Requests for review based on sentence	11	28.21	12	34.28
Requests for review based on finding & sentence	9	23.08	12	34.28
Total	**39**	**100**	**35**	**100**

Note: An officer or non-commissioned member may request a review authority to set aside the finding of guilty or to alter the sentence.

Decisions of Review Authority

	2009-2010		2010-2011	
	#	%	#	%
Upholds decision	11	28.20	4	11.43
Quashes findings	22	56.41	22	62.86
Substitutes punishment	4	10.26	6	17.14
Mitigates / commutes / remits punishment	2	5.13	3	8.57
Total	**39**	**100**	**35**	**100**

COURT MARTIAL REPORTING

1 April 2010 – 31 March 2011

Courts Martial by Type

	2009-2010		2010-2011	
	#	%	#	%
Standing Court Martial	48	88	66	96
General Court Martial	8	12	3	4
Total	**56**	**100**	**69***	**100**

Note 1: These figures count the number of courts martial commenced during the reporting period and include one court martial that was commenced but not completed

Note 2: Bill C-60 (now S.C. 2008, c. 29) reduces the types of court martial from four to two. Disciplinary Court Martial and Special General Court Martial were eliminated.

Note 3: The difference between Standing Court Martial and General Court Martial is explained in Chapter III.

*There were 69 courts martial and 70 accused (1 joint trial).

Language of Courts Martial

	2009-2010		2010-2011	
	#	%	#	%
English	46	82	51	73
French	10	18	19	27
Total	**56**	**100**	**70**	**100**

Courts Martial by Rank

	2009-2010	2010-2011
Private and Corporal (includes Master-Corporal*)	42	42
Sergeant to Chief Warrant Officer	9	12
Officer	5	16**
Total	**56**	**70**

*Master Corporal is not a rank. It is an appointment pursuant to QR&O article 3.08.

**This figure includes an officer who faced trial and re-trial on the same charges

Summary of Charges

NDA Article	Description	2009-2010	2010-2011
75	Offences related to security	3	1
83	Disobedience of lawful command	8	5
84	Striking or offering violence to a superior	1	2
85	Insubordinate behaviour	1	6
86	Quarrels and disturbances	5	3
87	Resisting or escaping from arrest or custody	0	1
88	Desertion	1	0
90	Absent without leave	11	16
93	Cruel or disgraceful conduct	6	6
95	Abuse of subordinates	3	2
96	Making false accusations or statements or suppressing facts	1	0
97	Drunkenness	10	5
101.1	Failure to comply with conditions	9	6
114	Stealing	10	9
116	Destruction, damage, loss or improper disposal	5	5
117 (*f*)	An act of a fraudulent nature	8	14
118.1	Failure to appear or attend	1	0
122	False answers or false information	0	1
124	Negligent performance of military duty	5	9
125(*a*)	Wilfully (or negligently) made a false entry	1	15
129	Conduct to the prejudice of good order and discipline	25	49
130 (4(1)*CDSA*)*	Possession of substance	3	0
130 (5(1) *CDSA*)	Trafficking in substance	7	4
130 (82(1) CC)**	Possession without lawful excuse of an explosive substance	1	0
130 (86(1) CC)	Careless use of a firearm	1	1
130 (87 CC)	Pointing a Firearm	0	2
130 (91(1) CC)	Unauthorized possession of a firearm	0	3
130 (95 CC)	Possession of prohibited or restricted firearm with ammunition	0	1
130 (104(1) CC)	Unauthorized importing and exporting	0	2
130 (121(1) (c) CC)	Fraud on Government	2	0
130 (130 CC)	Personating peace officer	0	1

NDA Article	Description	2009-2010	2010-2011
130 (139 CC)	Obstructing justice	0	1
130 (140(1) CC)	Public mischief	1	2
130 (151 CC)	Sexual interference	1	0
130 (153 CC)	Sexual exploitation	2	1
130 (163.1(4)CC)	Possession of child pornography	2	0
130 (173 CC)	Indecent acts	1	0
130 (220 (a) CC)	Causing death by criminal negligence where firearm is used	1	0
130 (235(1) CC)	Second degree murder	0	1
130 (236 CC)	Manslaughter	1	0
130 (239(1) (a.1) CC)	Attempt to commit murder using firearm	0	1
130 (249 (3) CC)	Dangerous operation causing bodily harm	1	0
130 (253 (a) CC)	Operation while impaired	1	0
130 (264.1 CC)	Uttering threats	4	1
130 (264 (3) CC)	Criminal harassment	1	0
130 (266 CC)	Assault	4	5
130 (267 CC)	Assault with a weapon or causing bodily harm	1	2
130 (269 CC)	Unlawfully causing bodily harm	0	3
130 (270(1) CC)	Assaulting a peace officer	1	0
130 (271 CC)	Sexual assault	12	9
130 (272(1) CC)	Sexual assault with a weapon	0	1
130 (334 CC)	Punishment for theft - value stolen does not exceed $5000	1	0
130 (348 CC)	Breaking and entering	0	2
130 (349(1) CC)	Being unlawfully in dwelling-house	0	2
130 (362(1)(*a*) CC)	False pretences	1	0
130 (367 CC)	Forgery	2	0
130 (368 CC)	Uttering a forged document	2	3
130 (380(1) CC)	Fraud	2	6
130 (430(1.1) CC)	Mischief in relation to data	6	0
130 (437 CC)	False alarm of fire	0	1
130(733.1(1) CC)	Failure to comply with probation order	5	0
Total Offences		181	210

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.
* Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA].
** Criminal Code, R.S.C., 1985, c. C-46 [CC].

Courts Martial by Command

	2009-2010		2010-2011	
Vice Chief of the Defence Staff	0	0	5	7.14
Canada Operational Support Command	1	1.79	2	2.86
Canada Expeditionary Force Command	0	0	2	2.86
Chief of the Maritime Staff	11	19.64	5	7.14
Chief of the Land Staff	32	57.14	35	50
Chief of the Air Staff	6	10.71	9	12.86
Chief of Military Personnel	4	7.14	11	15.71
Assistant Deputy Minister (Information Management)	2	3.57	1	1.43
Total	**56**	**100**	**70**	**100**

Disposition by Case

	2009-2010		2010-2011	
	#	%	#	%
Found/Plead Guilty to at least one charge	45	80	62	89
Not Guilty of all charges	11	20	8	11
Total	**56**	**100**	**70**	**100**

Sentences

	2009-2010	2010-2011
Dismissal	3	2
Imprisonment	10	7
Detention	4	6
Reduction in Rank	3	4
Severe Reprimand	11	18
Reprimand	11	15
Fine	33	49
Minor punishments: Caution	1	0
Total	**76**	**101**

Note: More than one type of punishment can be included in a sentence.

APPEALS REPORTING

1 April 2010- 31 March 2011

Decisions Rendered on Appeals

	2009-2010	2010-2011
Court Martial Appeal Court of Canada	8	7
Supreme Court of Canada	0*	1
Total	**8**	**8**

* Two cases were appealed to the Supreme Court of Canada, however, only one decision was made during the report period. One application for leave to appeal was made, however the application was dismissed.

Appeals by Party

	2009-2010	2010-2011
Appeals by Crown	0	2
Appeals by Offender	8	5
Total	**8**	**7**

Nature of Appeal

	2009-2010	2010-2011
Finding	4	4
Sentence (severity and/or legality)	1	0
Finding and sentence	2	3
Constitutional issue	0	0
Release pending appeal	1	0
Total	**8**	**7**

Disposition

	2009-2010	2010-2011
Upheld trial decision	4	0
Overturned trial decision in whole or part	4	2
Appeal Granted	0	4
Abandoned	0	1
Total	**8**	**7**

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.